IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2008 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORIBEN BHALABHAI GUNAVA

Versus

MOHMAD ABDUL BASIR BALEK

Appearance:

1. First Appeal No. 2008 of 1999
MR MUKESH R SHAH for Petitioner No. 1
DELETED for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 2,3
MR DARSHAN M PARIKH for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 05/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Mr.R.N.Shah learned counsel for Mr.M.R.Shah for the appellant and Mr. D.M.Parikh learned counsel for respondent no.3. Respondent no.1 deleted and respondent no.2 served.

2. This appeal, under Section 173 of the Motor Vehicles Act, has been directed against the judgement and award passed by the M.A.C.Tribunal at Bharuch in M.A.C.Petition No. 616 of 2001, awarding an amount of Rs.49,000/- with 12% interest from the date of the filing of the petition till realization of the amount.

3. Since there is no dispute with the factual aspect and the appeal having been confined to the deduction of Rs.200/- for expenses for self, as stated by the learned advocates the R & P from the Trial Court, being not required, has not been called for.

4. In the accident which occurred on 10.2.1992 the appellant sustained injuries. It is submitted by Mr. Shah learned counsel for the appellant that the Tribunal has estimated the income of the injured at Rs.625/- per month, taking her income at the rate of Rs.25/- per day but the Tribunal has erred in deducting Rs.200/- for expenses for self and the actual income thus estimated to be Rs.425/- per month is illegal and improper. It is this part of the award which is under challenge in the present appeal.

5. It may be realized that this is a injury case, there is no grievance as regards the income assessed at the rate of Rs.25/- per day i.e. Rs.625/- per month. The amount of Rs.200/- per month could have not been legally deducted by way of personal expenses of the injured. Taking the income of the injured at Rs.650/per month and considering 25% disability assessed by the Doctor and accepted by the Tribunal, the actual loss of income would come to Rs.3750/- and applying multiplier of 15 the future loss of income would come to Rs.28,800/-. Whereas, the Tribunal has awarded Rs.20,250/- by way of future loss of income. Thus, it will be seen that the appellant would be entitled to Rs.28,800/- by way of future loss of income instead of Rs.20,250/awarded by the Tribunal.

6. The Tribunal under the head of actual loss of income has awarded Rs.2070/- taking the income at the rate of Rs.450/-, after deducting Rs.200/per month by way of personal expenses of the injured, for the period of six months. Taking the income of the injured to be Rs.650/- per month for the period of six months actual

loss of income would come to Rs.3900/- for six months which would mean that the appellant would be entitled to additional amount of Rs.1200/- by way of actual loss of income for the period of six months.

7. It will be seen from the above that the appellant would be entitled to additional amount of Rs.8550/- by way of future loss of income and Rs.1200/- by way of actual loss of income for the period of six months as pointed out above. In all additional amount of Rs.9750/to round of Rs.10,000/-.

8. In view of the above, the appeal is partly allowed. The appellant is entitled to an additional amount of Rs.10,000/- which shall carry 12% interest from the date of application till the realization of the amount. No order as to costs.

(N.G.Nandi,J.)

(J.R.Vora,J.)

(vipul)